

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion #1989-90/4
Letterhead Listing: Elected Public Official/Firm Member
January 11, 1990

RULE REFERENCES:

- *Rule 7.1
- *Rule 7.1(b)
- *Rule 7.5(a)
- *Rule 7.5(c)

SUBJECTS:

- *Advertising and Solicitation
- *Letterhead
- *Public Officials

CODE REFERENCES:

- *DR2-102(B)
- *DR2-103
- *DR2-104

ANNOTATIONS:

Any communication contained in an attorney's letterhead must not be misleading to the public. (Rule 7.1; 7.5(a))

The inclusion of the name of a lawyer who has been appointed or elected to a high public office, in the firm name, is inherently misleading to the public. It is in violation of Rule 7.1. (Rule 7.1)

I. QUESTION:

Do the Rules of Professional Conduct prevent the name of a lawyer who has been elected to a high federal public office from appearing on the letterhead of a law firm with the designation "on leave", or appearing in the name of the firm?

II. BRIEF RESPONSE:

Rules 7.1(b) and 7.5(c) of the Rules of Professional Conduct would prohibit the inclusion of the name of the lawyer who has been elected to a high federal public office, from appearing in the name, letterhead or other professional notices of a law firm.

III. RESPONSE:

The discussion and opinions cited in NH Op #1988-89/22 are dispositive to the inquiry presented and will not be reproduced here. Rule 7.1 requires that any communication contained in an attorney's letterhead must not be misleading to the public. That concept is codified by Rule 7.5(a) which states that "a lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." It is instructive to reiterate the provisions of Rule 7.5(c), which states:

"[T]he name of a lawyer holding a public office shall not be used in the name of the law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly in practice with the firm."
Rule 7.5(c).

The inclusion of the name of a lawyer who has been appointed or elected to a high public office in the firm name has been found repeatedly to be inherently misleading to the public and, therefore, in violation of Rule 7.1 and its predecessor in the Model Code. This violation cannot be resolved by the addition of an explanation in the letterhead or professional announcement, such as the lawyer being on a "leave of absence". As the Professional Ethics Commission of the Board of Overseers of the Bar of the State of Maine found, "[T]o continue to use the name in the firm title would be misleading, the implication being that the lawyer has continued membership in the firm after he has become a public official." Maine Opinion 13 (10-15-80).

Similarly, the use of the designation "of counsel" would be a violation of Rule 7.1 unless there could be shown a "close and continuing" or an "ongoing and regular relationship" between the law firm and the lawyer-official. *See*, NH Op 1988-89/20; Formal Opinion 84-351 (ABA 1984).

A situation more closely related to the inquiry was decided in Michigan where it was found that a law firm ... may not continue to use on its letterhead as a part of the firm name the name of a partner who is serving as a member of the United States Congress and who is not actively and regularly practicing law as a member of the firm. Michigan Opinion CI-860 (2-19-83.).

Aside from the issue of misleading the public through the use of a lawyer's name in the letterhead, most opinions on this issue turn on the fact that the lawyer is not "actively and regularly practicing law as a member of the firm", and not on whether the public office entitles the holder to continue to practice law concurrently with official duties. This is the clear import of the language of Rule 7.5(c) as promulgated in New Hampshire.

IV. CONCLUSION:

The inclusion of the name of the lawyer who has left a firm to assume a high federal public office in either the name of the law firm or in the letterhead has the potential for misleading the public into believing that the lawyer is still practicing law with his/her law firm and that the law firm wields additional power and influence because of its association with the lawyer. The foregoing problem is not resolved by adding the modifier "on leave", or something similar. Therefore, the inclusion of the lawyer/official's name in a law firm's letterhead or in its firm name violates the provisions of Rule 7.1(b) and 7.5(c).